

HOUSE BILL 2619

By Dunn

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 7 and Title 38, Chapter 3, Part 1, relative to the authority of certain federal employees in this state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 38-3-113, is amended by deleting the section in its entirety and substituting instead the following:

(a) Any federal employee who intends to conduct an arrest, seizure or search in the process of enforcing a federal statute, regulation or court order within this state shall first notify the local law enforcement agency of the state jurisdiction within which the arrest, seizure, or search is to be conducted. This notice shall serve to obviate any inappropriate response by local law enforcement to suppress any reported disturbance of the peace that might result from the federal action.

(b) No such notice shall be required for any federal action to be taken:

(1) Within a federal enclave for which jurisdiction has been expressly ceded to the United States by a Tennessee statute;

(2) If the federal employee witnesses the commission of a crime the nature of which requires an immediate arrest;

(3) The intended subject of the arrest, search, or seizure is an employee of the local law enforcement agency or is an elected county or state officer; or

(4) The federal employee has probable cause to believe that the subject of the arrest, search, or seizure has close connections with the local law enforcement agency, which connections are likely to result in the subject being informed of the impending arrest, search, or seizure.

(c)

(1) A federal employee who desires to make an arrest or conduct a search or seizure under subdivision (b)(3) or (b)(4) shall notify the attorney general and reporter of the planned arrest, search, or seizure unless the resulting delay would probably cause serious harm to one (1) or more individuals, to a community or would probably allow time for flight of the subject of the arrest, search, or seizure in order to avoid prosecution.

(2) The notice shall be served in writing by the federal officer in charge of the planned action or a designated representative of the agency taking the action.

(3) The notice shall be served to the highest ranking officer of the local law enforcement agency, or previously designated lower ranking officer, sufficiently in advance of the planned federal action to allow the local law enforcement agency's personnel to be prepared to respond appropriately.

(4) The notice shall contain at a minimum the following information:

(A) The name of the subject of the arrest, search, or seizure;

(B) A description of the specific things to be searched for or seized;

(C) A statement of the date and time that the arrest, search, or seizure is to occur;

(D) The address or location where the intended arrest, search, or seizure will be attempted;

(E) A clear statement of probable cause for the arrest, search, or seizure or a federal arrest, search, or seizure warrant that contains a clear statement of probable cause; and

(F) A clear statement of the constitutional power and federal statute or regulation authorizing the federal action.

(5) The local law enforcement agency receiving such notice shall review the content of the notice and ascertain to its satisfaction the following:

(A) The time and location of the planned federal action;

(B) The nature of the action and likely local effects on traffic, commerce, public alarm, potential citizen calls for local law enforcement intervention, and other factors necessary to insure keeping of the peace; and

(C) The constitutional and legal validity of the planned action.

(6) If the local law enforcement agency finds the federal action to be valid as the exercise of an enumerated federal power and an appropriate federal statute or regulation, then:

(A) The local law enforcement agency shall issue orders to its department to avoid any conflict or inappropriate response to public alarm or calls for intervention; and

(B) The local law enforcement agency shall accumulate and retain such notices and any reports of action resulting therefrom.

(7) If the local law enforcement agency questions any operational aspect of the planned federal action, the agency shall inquire immediately with the federal person or agency giving the notice to ascertain such additional facts as necessary to avoid operational conflicts.

(d) If the local law enforcement agency questions the constitutional or legal authority for the federal action pursuant to subdivision (c)(7), the agency shall immediately notify the district attorney general of:

(1) All materials contained in the notice given the agency by the federal personnel or agency;

(2) Any additional information available to the local law enforcement agency regarding the location, or persons involved, or other relevant factors; and

(3) The agency's questions regarding the validity of the federal authority asserted in the notice.

(e) If the local law enforcement agency is notified of an injunction against the planned federal action by any Tennessee court of appropriate jurisdiction, the local law enforcement agency shall take the action decreed by the court.

(f)

(1) It is an offense for any official, agent, or employee of the United States government to enforce or attempt to enforce any federal law, order, rule or regulation that is beyond the authority granted to the federal government pursuant to the United States Constitution.

(2) A violation of this subsection (f) is a Class E.

(g) In addition to the penalties set forth in subsection (f), any person in violation of subsection (f) may also be prosecuted for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted search occurred, for theft if a seizure or attempted seizure occurred, and for any applicable homicide offense if loss of life occurred in connection with the violation of subsection (f). The persons involved shall also be charged with any other applicable criminal offense.

(h) The district attorney general may prosecute once a claim of violation of subsection (f) has been made by the local law enforcement agency or designee of the local law enforcement agency.

(i) Any local law enforcement agency, designee of the local law enforcement agency, or other person acting under authority of the local law enforcement agency, enforcing or attempting to enforce this section shall, upon a showing of good faith reliance upon this section, be immune from criminal prosecution and civil liability for any actions taken to enforce or attempt to enforce this section.

SECTION 2. Tennessee Code Annotated, Section 8-7-103, is amended by adding the following as a new subdivision:

(8) Shall immediately review any notice by a local law enforcement agency of a pending federal arrest, seizure, or search to ascertain whether the action is authorized by the enumerated powers cited by the federal persons or agency taking action as granted in the United States Constitution and the statutes and regulations under it.

SECTION 3. Tennessee Code Annotated, Title 8, Chapter 7, Part 3, is amended by adding the following as a new section:

8-17-316.

(a) If the district attorney general reviews a notice under § 8-7-103(8) and finds that the foundation for the action is questionable for either failure to cite a proper power granted or as inappropriate under the statutes or regulations cited, the district attorney general shall file an injunction with a court of proper jurisdiction, asking for an immediate temporary restraining order.

(b) Upon adjudication of the request for an injunction, the district attorney general shall immediately notify the local law enforcement agency who submitted the notice for review of the action required.

SECTION 4. Tennessee Code Annotated, Title 38, Chapter 3, Part 1, is amended by adding the following section:

38-3-115.

() Pursuant to the tenth amendment to the United States Constitution and this state's compacts with other states, the general assembly declares:

(1) That any federal law purporting to require local or state law enforcement agencies to act at the direction of the federal government or the United States military is beyond the authority granted to the federal government pursuant to the United States Constitution, is not recognized by this state, is specifically rejected by this state and is declared to be invalid in this state; and

(2) That any federal law purporting to give federal agents or employees, including any members of the United States military, the authority of a county sheriff, or the authority of any other state or local law enforcement agency of this state, without the express permission of this state, is beyond the authority granted to the federal government pursuant to the United States Constitution, is not recognized by this state, is specifically rejected by this state, and is declared to be invalid in this state.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.